



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201003030

OCT 30 2009

Uniform Issue List: 408.03-00

SE: T: EP: RA: A2

Legend:

Taxpayer A = ***

IRA X = ***

Account C = ***

Account M = ***

IRA Y = ***

Amount A = ***

Amount B = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Date 5 = ***

Page 2

Date 6 = ***

Date 7 = ***

Company A = ***

Company B = ***

Company C = ***

Company D = ***

Investment
Advisor M = ***

Investment
Advisor C = ***

Dear ***:

This is in response to a request submitted on your behalf by your authorized representative on August 19, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 49, represents that he received a distribution from IRA X totaling Amount B. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the fact that he did not recall that the annuity was an IRA annuity and that the policy, the statements and other documents that he provided to his investment advisor who advised him to surrender the annuity were silent as to the IRA nature of the annuity, thus leading to the investment advisor failing to advise Taxpayer A that Amount B should be rolled over into another IRA.

Taxpayer A represents that he was a partner or owner of several family run businesses spanning a period of several years. He further represents that he has only a high school education and has no accounting, legal or tax training, background or experience. Taxpayer A asserts that he received a distribution from his prior employer's tax-qualified 401(k) plan and, on Date 1, with the assistance of Investment Advisor M, rolled over the distribution to Company A into IRA X through the purchase an annuity in the amount of Amount A.

The application for IRA X was completed by Investment Advisor M rather than Taxpayer A. Taxpayer A signed the form but authorized Investment Advisor M to complete the paperwork for him. Also, Taxpayer A asserts that other than the notation on the application form that IRA X was a "qualified IRA" and that it was a "Direct Transfer (IRA to IRA)," this was the last direct reference to IRA X being an IRA that Taxpayer A ever received.

Thereafter, Taxpayer A received yearly statements relating to IRA X, first from Company A, and then Company B (the successor-in-interest to Company A). Although the first statement stated that it was a "substitute 5498 form," which is the form used to report contributions to an IRA, Taxpayer A asserts that he had no knowledge or information as to what a "5498 form" or a "substitute 5498 form" was or its function. Nowhere on any of the subsequent statements submitted by Taxpayer A was IRA X ever referred to as an "IRA" nor was there any indication that it was an IRA.

Furthermore, Taxpayer A asserts that the fact that the earnings on IRA X were not reported did not cause him to realize IRA X was being held as an IRA. Taxpayer A asserts that during the almost 10 year period since IRA X had been originally established he had "simply forgotten" that the account had been a rollover from his retirement plan into an IRA.

On Date 2, Taxpayer A changed investment advisors to Investment Advisor C. Taxpayer A represents that he had provided the annuity policy and all the statements relating to it to Investment Advisor C. Investment Advisor C reviewed IRA X and the statements supplied to him by Taxpayer A and saw nothing to indicate that IRA X was an IRA under section 408(b) of the Code. In adjusting Taxpayer A's investments, Investment Advisor C recommended to Taxpayer A that he surrender IRA X and obtain its cash value for reinvestment. On Date 3, Taxpayer A completed a Surrender Request Form with respect to IRA X. The Surrender Request Form did not indicate anywhere that the underlying amount was an IRA. Taxpayer A received a check dated Date 4, for the cash value of IRA X equal to Amount B. Taxpayer A asserts that neither the check nor the stub of Amount B relating to the surrender of IRA X indicate that the proceeds were an IRA, nor was the check accompanied by any writing alerting the Taxpayer to the fact that he was receiving the proceeds from an IRA or that he had a 60 day time period to roll over such amounts into another eligible retirement vehicle.

On Date 5, Taxpayer A deposited Amount B into Account C. Taxpayer A then supplied Investment Advisor C with a check equal to Amount A for reinvestment. On Date 6, Investment Advisor C deposited the check for Amount A into Account M, a non-IRA account, for reinvestment.

Taxpayer A asserts that only upon his receipt of the Form 1099-R from Company B showing that the distribution from IRA X was from an IRA, and his presentation of the

Form 1099-R to his accountant did Taxpayer A or anyone on his behalf become aware that IRA X was, in fact, an IRA. On Date 7, which was relatively soon after Taxpayer A received his Form 1099-R, but well beyond 60 days after Date 4, Investment Advisor C caused Amount B to be transferred to IRA Y, a new IRA account established with the intent of completing the rollover transaction. Taxpayer A has provided documentation supporting his assertion that Amount B was not used for any other purpose during the period between Date 4 and Date 7.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount B in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408 (d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or

other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted in this case indicates that Taxpayer A cashed out IRA X with a surrender value of Amount B with the intent of reinvesting the amount in another account. Taxpayer A admits that at the time he cashed out IRA X, he was unaware that it was an IRA and had no intention at that time of rolling over the amount into another IRA nor did he instruct anyone to do so on his behalf. Taxpayer A's failure to accomplish a rollover within the 60-day period was due to him having "simply forgotten" that IRA X was, in fact, an IRA and having not received any other direct reference to IRA X being an IRA in the 10 years after it was established.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16. While it is true that almost 10 years had elapsed since IRA X had been established, and Taxpayer A had not received any communication from Companies A or B stating that IRA X was an IRA, Taxpayer A does have the ultimate responsibility of being aware of the nature of his various accounts. Taxpayer A admits that he was aware of the tax-qualified nature of IRA X when it was established, and, while it is true that financial institutions when making distributions from IRAs often provide information concerning the tax-qualified nature of the account and/or the 60 day roll over rule, they are not legally required to do so. As such, we find no error on their part for failure to do so. Accordingly, Taxpayer A has not provided evidence that his failure to follow the 60 day rollover requirement was for a reason that was outside of his reasonable control.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount B from IRA X, and thus the contribution of Amount B to IRA Y will not be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code, because the 60-day rollover requirement was not satisfied.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ***** by phone at (**) **-****. Please address all correspondence to

Sincerely,


Donzell H. Littlejohn, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

CC: ***

